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BASIC
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RR, SR, TSC-SR;
ODIO, OIO--FDE, RECONE;
OCRO-ADOCPA, DCCRC

Originating Office: OSSI

PROGRAM OPERATIONS MANUAL SYSTEM
Part 05 - Supplemental Security Income
Chapter 040 - Administrative Review, Appeals and Finality
Subchapter 70 - Title XVI (SSI) Administrative Finality

New Material	No. of Pages
Conversion Chart	1
Table of Contents (SI 04001.000-SI 04070.000)	1
Table of Contents (SI 04070.001-SI 04070.080)	1
SI 04070.001C.3-SI 04070.080B	22

Background

This is a new basic subchapter which was written to conform to the new format. A new chapter is created to include administrative review and appeals procedures and procedures for reopening and revising final determinations (title XVI only). Except as specified below, no revisions or changes were made to existing instructions.

Explanation of Manual Changes

04070.001 When Determinations and Decisions Are Final

We have revised this instruction in subsection C.3., to clarify that a determination becomes final on the date of the notice of the determination unless a party files a timely request for appeal. This permits the field office to immediately reopen and revise a determination that is clearly erroneous, thereby possibly avoiding the need for further administrative review and makes title XVI instructions on finality consistent with title II instructions contained at GN 04001.040.

Effective Date: Upon Receipt

B

U.S. Department of Health and Human Services
Social Security Administration
Office of Policy
SSA Pub. No. 68-0504070
I.C.N. 993447

Selective Distribution
B51/PSC
To adjust quantity requirements, submit form SSA-1296, "Request for Address or Distribution Change"

HE 3.6/5:

READEX FICHE best copy available

04070.040 Revising Determinations

These instructions have been revised to conform to regulatory changes concerning "diligent pursuit" which require an analysis of periods of inaction when more than 6 months elapse from the date of affirmative action in writing to the date of revision, when the date of affirmative action in writing occurs within the 1- or 2-year administrative finality period and revision occurs after the period ends. If the delay is shown to be reasonable, the revision can be made, even if it is unfavorable to the recipient; otherwise, a revision can only be made if it is favorable. Delays are presumed to be unreasonable unless SSA shows otherwise. The date of the revised determination is defined as the date of the notice of the revised determination.

04070.060 Posteligibility Actions

We have clarified the difference between "initial" and "revised" determinations, particularly for the purpose of calculating the period for reopening. An "initial" determination is one which adjudicates eligibility and/or payment amounts for months for which an adjudication had not previously been made. A "revised" determination is one which changes a previously made final determination.

POMS

PROGRAM OPERATIONS MANUAL SYSTEM

Part 05

Supplemental Security Income

CHAPTER 040

Administrative Review, Appeals and Finality

SUBCHAPTER 70

Title XVI (SSI) Administrative Finality

U.S. Department of
Health and Human Services
Social Security Administration
Office of Policy
SSA Pub. No. 68-0504070
I.C.N. 993447

Check List of POMS Transmittals Received

TN	Date	Initial	TN	Date	Initial	TN	Date	Initial	TN	Date	Initial
1.			37.			73.			109.		
2.			38.			74.			110.		
3.			39.			75.			111.		
4.			40.			76.			112.		
5.			41.			77.			113.		
6.			42.			78.			114.		
7.			43.			79.			115.		
8.			44.			80.			116.		
9.			45.			81.			117.		
10.			46.			82.			118.		
11.			47.			83.			119.		
12.			48.			84.			120.		
13.			49.			85.			121.		
14.			50.			86.			122.		
15.			51.			87.			123.		
16.			52.			88.			124.		
17.			53.			89.			125.		
18.			54.			90.			126.		
19.			55.			91.			127.		
20.			56.			92.			128.		
21.			57.			93.			129.		
22.			58.			94.			130.		
23.			59.			95.			131.		
24.			60.			96.			132.		
25.			61.			97.			133.		
26.			62.			98.			134.		
27.			63.			99.			135.		
28.			64.			100.			136.		
29.			65.			101.			137.		
30.			66.			102.			138.		
31.			67.			103.			139.		
32.			68.			104.			140.		
33.			69.			105.			141.		
34.			70.			106.			142.		
35.			71.			107.			143.		
36.			72.			108.			144.		

Check List of POMS Transmittals Received

TN	Date	Initial	TN	Date	Initial	TN	Date	Initial	TN	Date	Initial
145			181			217			253		
146			182			218			254		
147			183			219			255		
148			184			220			256		
149			185			221			257		
150			186			222			258		
151			187			223			259		
152			188			224			260		
153			189			225			261		
154			190			226			262		
155			191			227			263		
156			192			228			264		
157			193			229			265		
158			194			230			266		
159			195			231			267		
160			196			232			268		
161			197			233			269		
162			198			234			270		
163			199			235			271		
164			200			236			272		
165			201			237			273		
166			202			238			274		
167			203			239			275		
168			204			240			276		
169			205			241			277		
170			206			242			278		
171			207			243			279		
172			208			244			280		
173			209			245			281		
174			210			246			282		
175			211			247			283		
176			212			248			284		
177			213			249			285		
178			214			250			286		
179			215			251			287		
180			216			252			288		

Chapter 040 - Administrative Review, Appeals and Finality

Subchapter 70 - Title XVI (SSI) Administrative Finality

Old POMS (GN) Reference	*New POMS (SI) Reference*
04070.001	04070.001, 04070.010
04070.010	04070.001 D.
04070.020	04070.001
04070.030	04070.010 A.
04070.040	04070.001 B., D.
04070.050	04070.001
04070.060	04070.010 C.
04070.070	04070.010, 04070.040
04070.080	04070.010 A.
04070.090	04070.010 A.
04070.100	04070.010 A.
04070.110	04070.010 A., B., C.
04070.120	04070.010 C.
04070.130	04070.010 B., 04070.020, 04070.025
04070.140	04070.010 C., 04070.060
04070.150	04070.030 B.
04070.160	04070.030 C.
04070.170	——— Deleted
04070.180	04070.070
04070.190	——— Deleted
04070.195	04070.080 B.2.
04070.200	04070.050

04070.000 Administrative Finality

	Section
Title XVI Administrative Finality - General	04070.001
Reopening Determinations	04070.010
Fraud	04070.020
Similar Fault	04070.025
Development Required When a Prior Determination or Decision is Reopened	04070.030
Revising Determinations	04070.040
Notice of Revised Determination or Decision	04070.050
Posteligibility Actions	04070.060
Overpayment/Underpayment Development	04070.070
Relationship to Title II Benefits	04070.080

ADMINISTRATIVE REVIEW, APPEALS AND FINALITY

	Subchapter
General	04001.000
Initial Determinations	04010.000
Reconsiderations	04020.000
ALJ Hearings	04030.000
AC Review	04040.000
Judicial Review and Remands	04050.000
Expedited Appeals Procedure	04060.000
Title XVI (SSI) Administrative Finality	04070.000

NOTE: Subchapters SI 04001.000 through SI 04060.000 have not been written. These will be created as part of the rewrite of the SSI appeals instructions.

04070.001 TITLE XVI ADMINISTRATIVE FINALITY - GENERAL

Citations 20 CFR 416.1401 and 416.1487-416.1494

A. INTRODUCTION

1. What Is Administrative Finality

Administrative finality is the concept that a **determination or decision becomes final and binding when rendered**, unless it is timely appealed or later reopened and revised for special reasons.

The purpose of this chapter is to give the reasons that a determination or decision can be reopened and revised as well as the procedures and time limits for reopening and revising a determination or decision after it has become final.

2. Purpose for Reopening and Revising

A determination or decision can be reopened and revised to correct **erroneous** determinations and decisions. **Correct** determinations and decisions **may not** be reopened and revised.

B. DEFINITIONS

1. Determination

A determination is an **adjudication of eligibility and/ or payment** amount by a decisionmaker below the level of administrative law judge (ALJ), including "deemed" determinations. (See SI 04070.030 B. for definition.)

An "initial" determination is the first determination on an application, posteligibility (PE) event or periodic redetermination of eligibility.

A "revised" determination is one in which either the end result or a finding with respect to a factor of eligibility of a prior determination has been changed.

2. Decision

A decision is an **adjudication of a claimant's appeal** of a determination by:

- An ALJ, or
- The Appeals Council (AC).

A **"revised" decision** is one in which either the end result or a finding with respect to a factor of eligibility of a prior decision has been changed.

3. Reopening

Reopening is the process of reexamining a claim which may result in revision of a prior determination or decision. This occurs after a determination or decision has become final.

4. Revision

A revision occurs when:

a. **The end result is changed** (i.e., eligibility status or payment amount is changed); **or**

b. **A finding with respect to a factor of eligibility changes** even though the end result is not changed.
EXAMPLE: A determination of age is revised (e.g., age 61 to age 64) even though the individual is still not eligible.

C. POLICY PRINCIPLES

1. When Reopening May Be Requested

A reopening may be requested after the time limit for appeal has passed if a party is dissatisfied with a determination, revised determination, decision, or revised decision but has not requested review (unless good cause exists for a late request).

2. Who May Request Reopening

A person who is a party to a determination or the eligible spouse of any person who is claiming or receiving SSI payments may request that it be reopened and revised.

3. When Determinations and Decisions Become Final

A determination or decision becomes final and binding:

a. **Determinations**
On the date of the notice of the determination, unless a party files a request for reconsideration or hearing as appropriate before the 60-day period to request appeal passes.

C. POLICY PRINCIPLES (Cont.)

3. When Determinations and Decisions Become Final (Cont.)

b. **ALJ Hearing Decision**
On the date of the notice of the decision if:

- A party does not request AC review within 60 days, **and** the AC does not take jurisdiction **on its own motion** within 60 days, or
- The AC **denies** a party's request for review or, upon review, affirms the ALJ's decision; **and the party does not file an appeal** to the United States District Court which has jurisdiction within 60 days after receiving notice of either the AC's denial of review or the AC's decision.

D. OPERATING POLICY

1. What Determinations or Decisions Can Be Reopened and Revised

Determinations or decisions that were incorrect when made can be reopened and revised.

a. A determination or decision may have appeared correct based on the available evidence at the time it was made. **If it is later shown that it was incorrect when made**; e.g., through introduction of new and material evidence, it can be reopened and revised.

b. **A correct determination or decision cannot be reopened and revised merely because the circumstances on which it was based changed at a later time** if the changes do not affect the period covered by the determination or decision. For example, a correct determination of ineligibility on an initial claim because a claimant is receiving support and maintenance in kind will not be reopened and revised because the individual stops receiving the support and maintenance at a later date. In such an instance, the individual must file a new application.
EXCEPTIONS: Changes of position (SI 04070.040 C.3.) and statutory and regulatory changes (SI 04070.040 C.2.).

2. Who Can Reopen and Revise a Determination or Decision

A determination or decision **can only be reopened or revised by a decisionmaker at the same level or above.**

a. **Appeals Council**—any determination or decision or revised determination or decision, including any decision by the AC.

b. **Administrative Law Judge:**

- Any decision or revised decision by an ALJ, or
- Any determination or revised determination.

c. **Field Office**—any determination or revised determination, other than DDS determinations related to disability or blindness, so long as it was not revised by an ALJ or the AC.

3. When the Question of Reopening Will Arise

The question of reopening will arise when:

a. **The claimant or a party to the determination questions SSA's previous determination or decision** in his/her case in writing;

b. **A new SSI application is filed**, and the applicant alleges that the determination or decision made under the previous application was incorrect;

c. **We receive and record additional information or evidence** which is cause for review of the case; or

d. An SSA employee discovers **an obvious error on an SSA record**; e.g., transposed digits on an income entry.

4. No Reopening and Revision — Administrative Discretion

A refusal to reopen and revise is **not an initial determination**. Therefore, there is no right of appeal.

D. OPERATING POLICY (Cont.)

5. Consider all Requests to Reopen

Although SSA is not legally required to reopen a determination or decision when the claimant requests it (even if he/she makes the request within 1 year of the notice of initial determination), **it is the policy of SSA to consider the request in all cases** and to decide if reopening is appropriate. It will be necessary to evaluate all the evidence in the file together with any new evidence the individual may submit.

E. OPERATING PROCEDURE — TIME LIMIT LIMIT TO REQUEST APPEAL HAS NOT PASSED

If the claimant disagrees with the determination, and it appears from a review of the evidence, including new evidence the appellant may have submitted, that the FO determination is incorrect and a fully or partially favorable determination is possible, reopen and revise it. Otherwise, assist the claimant in requesting the appropriate appeal (e.g., reconsideration, ALJ hearing or AC review).

F. RELATED POLICY

1. Claimant's Request to Reopen ALJ or AC Decision

See GN 03110.040 to GN 03110.041

2. Questionable ALJ Decision

See GN 03110.330.

3. Request to AC to Reopen It decisions

See GN 03110.330

4. Date of System - Generated Notices

GN 03110.330 C.4.

4. Date of System Generate Notices

See CN 00801.005.

5. Cases Involving Disability or Blindness

See the disability instructions contained at DI 27501.000 ff. and DI 27505.000 ff.

04070.010 REOPENING DETERMINATIONS

A. POLICY

1. Period for Reopening

Periods for reopening determinations are:

a. **1-Year Rule**
Within 1 year (i.e., 12 months) from the date of the notice of the initial determination **for any reason.**

b. **2-Year Rule**
Within 2 years (i.e., 24 months) from the date of the notice of the initial determination if there is **good cause** to do so.

c. Indefinite
At any time if there is **fraud or similar fault** on the part of any person.

2. Good Cause For

There is good cause to reopen a determination if:

- **New and material evidence** is furnished; **or**
- **A clerical error** has been made; **or**
- There is an **error on the face of the evidence.**

B. DEFINITIONS

1. New and Material Evidence

New and material evidence is any **evidence which was not part of the file** when the determination or decision was made and **which shows facts that can result in a conclusion different from that reached in the prior determination or decision.**

2. Clerical Error

A clerical error is **any error** (e.g., mathematical, coding or input) **which results in an incorrect determination or decision** either favorable or unfavorable to the claimant.

B. DEFINITIONS (Cont.)

3. Error on the Face of the Evidence

An error on the face of the evidence is an error which exists when, on the basis of **all** the evidence in the file on which the determination or decision was based, it is clear that the determination or decision is incorrect.

4. Affirmative Action In Writing

Affirmative action in writing is the establishment of a record in writing by SSA that questions the correctness of the determination or decision. This can include preparation of a report of contact, establishment of a computer record or acknowledgment of receipt of a statement from a claimant, deemor, representative, recipient, eligible spouse, etc.

5. Fraud

Fraud exists when any person **knowingly, willfully and with intent to defraud:**

- makes or causes a false statement to be made; or
- conceals or misrepresents a fact

either of which is material to eligibility or payment amount.

The person need not be the claimant or anyone who is either related to the claimant or acting on behalf of the claimant. See GN 04105.001 for definitions of "knowingly", "willfully" and "with intent to defraud."

6. Similar Fault

Similar fault exists when:

a. Any person **knowingly makes (or causes to be made) an incorrect or incomplete statement** or knowingly conceals information that is material to eligibility or payment amount, **but**

b. **Intent to defraud is not required.** Fraud cannot be proven without establishing intent to defraud (see GN 04105.001).

c. **"Fault" means "an action proceeding from an inexcusable negligence or ignorance** that is nearly equal to fraud." (See GN 04020.010 C.)

d. As with fraud, the person need not be the claimant or anyone who is either related to the claimant or acting on behalf of the claimant.

C. OPERATING POLICY

1. How to Reopen A Determination

Determination may be reopened with:

a. **Request by a Party to the Determination**
We may reopen a determination as a result of a **request in writing** to reopen made by a party to the determination **other** than an SSA employee, such as, a claimant, recipient, eligible spouse, or representative of a party to the determination.

b. **Reopening by SSA Employee**
Any SSA employee may initiate reopening by questioning a prior determination in writing (i.e., establishing affirmative action in writing).

2. Types of Affirmative Action In Writing

Types of affirmative action in writing are:

a. **Output**
SSIRD's, SSID's alerts, listings or other printouts, etc., generated by special systems queries or runs that are designed to identify and record errors or potential errors. System runs include, but are not limited to MEF, SSR, IRS and other interfaces.

- If the output includes a **run date**, we use that date as the date of affirmative action in writing.
- If there is no run date, but there is a **query date**, we use the query date.
- If there is no query date or run date, use the **date of the alert or diary on the SSR.**

For procedures regarding interface alerts, see SI 04070.010 D.2. below.

C. OPERATING POLICY (Cont.)

2. Types of Affirmative Action In Writing (Cont.)

b. **Report of Contact**
Form SSA-250 entry, SSA-1719B, or other report or statement in which the SSA employee indicates the prior determination might be incorrect.
We use the date the record was made.

c. **Form SSA-795**
Form SSA-795, other statement, letter, etc., from the claimant, his or her representative payee or representative or another individual that could be interpreted as questioning the correctness of a prior determination.
We use the date the FO or other SSA component stamped the form or the envelope as received.

d. **Redetermination Form**
A redetermination form (i.e., SSA-8202, SSA-8202-OCR, SSA-8203-BK) on which the claimant or his or her representative payee or representative expressly questions the correctness of the prior determination.
We use the date the FO or other SSA component stamped the form or envelope as received.

e. **QA Report**
A quality assurance (QA) or assessment report concerning an erroneous or potentially erroneous prior determination or decision.
We use the earliest date that the QA or other SSA employee questioned the earlier determination or decision in writing.

f. **Financial Institution's Report**
A financial institution's report showing an account balance and interest that exceed income and/or resource standards.
If the request **resulted from an alert generated by an IRS interface run**, see a. above. This also applies to alerts on printouts which are generated by special runs (e.g., to identify potential errors related to a type of interest or bank account). If the request resulted from an **indication that a payment or payments may be in error** (e.g., a recipient notifies SSA of a previously unknown bank account by signing an SSA-795), we use the date SSA learned of and documented the possibility of the error. Otherwise, we use the date that the report or envelope was stamped as received by the FO or other SSA component. All issues based on information from the report receive the same dates.

g. **Development**
Development of an issue can raise another issue, which in turn, results in reopening. For example, while developing income from a resource, the CR learns that the recipient underwent a change in living arrangement that resulted in an overpayment.
We use the date that the new issue was documented in the file. Most likely, this will be a different, later date from the date of affirmative action in writing for the original issue.

h. **DOC Transfers of Redeterminations**
We use the date on the SSA-3951-U2 (SSI Redetermination Transmittal).

D. OPERATING PROCEDURE

1. Action to Be Taken After Affirmative Action In Writing or Request By Claimant

After affirmative action in writing or request by claimant, take action promptly, including but not limited to:

a. Annotate the SSA-250; and

b. Begin investigation and development or reconciliation of such action.

Keep a copy of the SSA-250 in file to document the affirmative action in writing.

D. OPERATING PROCEDURE (Cont.)

2. Processing Interface Alerts

In processing interface alerts:

a. Use **diaries and alerts** resulting from interface runs to obtain information about income or resources that affect eligibility or payment amount (e.g., notice of accounts in financial institutions from IRS interface runs), that may constitute resources to recipients and can also be sources of income if they are interest-bearing. Both the income and resource issues resulting from the information identified on the alert will have the same affirmative action in writing date. See SI 02310.001 ff.

b. Determine the date of affirmative action in writing. See section C.2.a. above.

04070.020 FRAUD

A. OPERATING POLICY

1. Referral to OIFO

a. If fraud is suspected, we complete all development for the entire period except the determination that fraud exists and **refer the case to the Office of Investigation Field Offices (OIFO) (formerly regional OIG)** in accordance with the instructions in GN 04110.001 ff.

b. If OIFO determines that fraud exists, **unlimited reopening is available**, even if the fraud is not prosecuted in a criminal proceeding.

c. **If OIFO determines that fraud does not exist, unlimited reopening based on fraud is not available**, and the FO must consider the possibility of similar fault. (See SI 04070.025.)

d. **The FO**, and not OIFO, **makes similar fault determinations.**

2. Curtailed Development

Even if it appears that fraud exists, fraud development may be curtailed in certain circumstances.

a. **If the recipient meets the criteria set forth in GN 04110.005**, the SSA employee has the option not to develop fraud.

b. **If prosecution is unlikely or inadvisable** because the case meets the criteria in GN 04110.025 E., development should be limited to the 2-year period.

B. OPERATING PROCEDURE — OVERPAYMENT COLLECTION

1. Overpayments in the 2-Years Period

Usually systems input of factors that affect payment will result in issuance of the appropriate automated notice. In all cases which require manual notices, send the appropriate notice of revised determination which advises the recipient of his/her appeal rights (either SSA-L8100-U2 or SSA-L8155-U2). Then follow procedures in GN 02201.705, GN 02220.001 ff. and SM T01310.001 ff. to recover the overpayments which had been made within the 2-year period before affirmative action in writing.

2. Overpayments Made Before the 2-Year Period

After OIFO makes a determination of fraud or the FO a determination of similar fault, follow the same procedures to recover the overpayment as described in 1. above.

C. RELATED POLICIES

1. Procedures For Developing Fraud

GN 04110.001 ff.

2. Completion of Form SSA-8551, Referral of Potential Violations

GN 04110.010.

C. RELATED POLICIES (Cont.)

3. **Referral to OIFO** — GN 04110.005-GN 04110.010 and GN 04110.020-GN 04110.025.

4. **Authority to Dispose of Violation Aspects of Cases** — GN 04110.040.

5. **Disposition of Potential Violation Cases** — GN 04110.095.

6. **Overpayment Recovery** — SI 02220.000 ff.

04070.025 SIMILAR FAULT

A. OPERATING POLICY

1. **When to Develop Similar Fault**

The FO has the authority to decide whether to initiate similar fault development. We consider developing similar fault when:

- A **case of suspected fraud has been referred to OIFO** and a determination has been made by that office that **fraud does not exist** because there is no fraudulent intent; **or**
- OIFO gives **no reason** for a determination that fraud does not exist; **or**
- The case meets all the criteria in section 2. below.

2. **Criteria to Established Similar Fault**

Criteria to establish similar fault are:

a. The changed event is **material** and will create a new or additional overpayment; **and**

b. A **wide discrepancy** exists between the new data and the data reported; **and**

c. **The SSI recipient (or deemor) knowingly completed an incorrect or incomplete report**, knowingly concealed events or changes, or knowingly neglected to report events or changes that affect payments; **and**

d. The event (change in income, resources, living arrangements, etc.) can and will be **verified**; **and**

e. The event (change in income, resources, living arrangements, etc.) is **clearly attributable** to the SSI recipient (or the deemor); **and**

f. The case **does not involve fraud**.

The term "wide discrepancy" cannot be defined in terms of money amount. It is a matter of judgment that depends on how recently the income was received, how long it was unreported or under-reported, as well as the amount and frequency, etc.

3. **Documentation**

Similar fault must be supported by a preponderance of evidence on Form SSA-553. If commencing with similar fault development, we summarize the evidence to show convincingly that similar fault does or does not exist.

4. **Notification**

a. The recipient **must** be notified on either the SSA-L8100-U2 (SSI Notice of Revised Determination) or the SSA-L8155-U2 (SSI Notice of Planned Action), as appropriate, that **similar fault exists and what evidence was used to make that determination**.

b. **The recipient must also be advised of his/ her appeal rights**.

5. **Overpayments**

a. If similar fault is detected and fraud does not exist, we:

- Make the similar fault determination; **then**
- Develop the **entire** overpayment; **and then**
- Recover the overpayment per GN 02201.705 ff., GN 02220.001 ff. and SM T01310.001 ff.

A. OPERATING POLICY (Cont.)

5. Overpayments (Cont.)

b. The overpayment notice should cover the **entire** overpayment period.

6. Waiver

a. If similar fault **on the part of the recipient** is established, the overpaid recipient should be found at fault for waiver purposes.

b. If similar fault is found **on the part of a deemor** for reopening purposes, the recipient can still be found without fault for waiver purposes.

7. Excluded Development

Under certain circumstances, similar fault development **should not be started**, or if it has been started, **it should be stopped**, because it would defeat the purpose of title XVI, result in excess effort on the part of SSA for a small payoff, impose undue hardship on the recipient, etc. Examples of such cases include, but are not limited to those in which:

- The SSI recipient is **dead**;
- The recipient is **75 or older** and is **in poor health**;
- Medical evidence indicates the SSI recipient has an illness **expected to result in death** in the near future; **or**
- The overpayment resulted solely from a **failure to report a cost-of-living increase** in a pension or annuity.

No documentation is required in these cases.

8. When to Curtail Development After Similar Fault Development Has Begun

Development after similar fault development has begun, should be curtailed when:

a. The suspect **SSI recipient died** after similar fault development was initiated;

b. Reasonable efforts to develop similar fault reveal **insufficient evidence** is available to establish a preponderance of evidence that the event involved in similar fault occurred **and the excess payment amount is less than the current monthly Federal benefit rate**;

c. **Negligence or error by SSA employees** significantly contributed to the overpayment;

d. The **law or policy has changed** so that the event or change would no longer cause excess payments (for the instructions regarding change of law and change of position, see SI 04070.040 B.4. and B.5.);

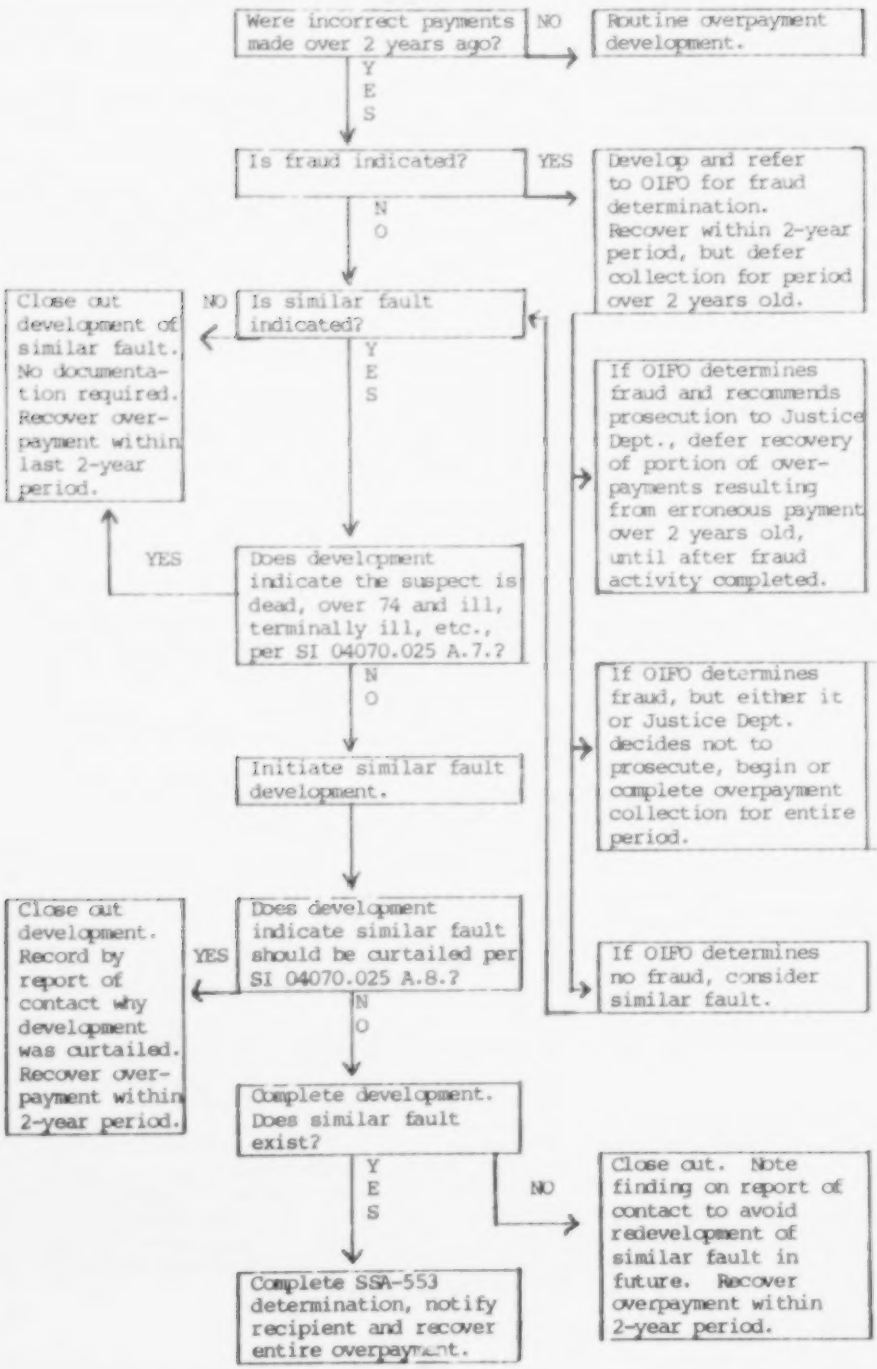
e. The potential **excess payment involves a situation difficult to establish**; e.g., repeated marital changes, frequent changes in living arrangements, in-kind income that is difficult to establish, etc.; **or**

f. **The file contains a favorable determination** (initial or appealed) on the issue involved in similar fault.

We complete a report of contact reflecting the reasons for curtailment in the above cases.

B. EXHIBIT — SIMILAR FAULT DETERMINATION FLOW CHART

Development if incorrect payments are discovered:


Were incorrect payments made over 2 years ago?
NO
Routine overpayment development.
YES
Is fraud indicated?
YES
Develop and refer to OIFO for fraud determination. Recover within 2-year period, but defer collection for period over 2 years old.
NO
Is similar fault indicated?
NO
Close out development of similar fault. No documentation required. Recover overpayment within last 2-year period.
YES
Does development indicate the suspect is dead, over 74 and ill, terminally ill, etc., per SI 04070.025 A.7.?
YES
If OIFO determines fraud and recommends prosecution to Justice Dept., defer recovery of portion of overpayments resulting from erroneous payment over 2 years old, until after fraud activity completed.
If OIFO determines fraud, but either it or Justice Dept. decides not to prosecute, begin or complete overpayment collection for entire period.
Initiate similar fault development.
Does development indicate similar fault should be curtailed per SI 04070.025 A.8.?
YES
Close out development. Record by report of contact why development was curtailed. Recover overpayment within 2-year period.
If OIFO determines no fraud, consider similar fault.
Complete development. Does similar fault exist?
NO
Close out. Note finding on report of contact to avoid redevelopment of similar fault in future. Recover overpayment within 2-year period.
Complete SSA-553 determination, notify recipient and recover entire overpayment.

C. RELATED POLICY

1. **Overpayment Recovery** — GN 02201.705 ff. and GN 02220.000 ff.

2. **Similar Fault Development — MEF/SSR Interfaces** — SI 02310.050-SI 02310.055.

04070.030 DEVELOPMENT REQUIRED WHEN A PRIOR DETERMINATION OR DECISION IS REOPENED

A. INTRODUCTION

This section describes the development required when a determination is reopened, including a "deemed" determination, revised determinations, decisions and revised decisions.

B. DEFINITION — DEEMED DETERMINATIONS

Certain determinations (including EØ1 cases) are deemed to occur. This normally happens monthly **when a recipient's eligibility and payment amount remain unchanged** in subsequent months when there is no actual initial determination with notice covering the month. The recipient receives no notice in writing of the deemed determination.

"No change" determinations made as a result of a redetermination which result in no notice to the individual are treated in the same manner as deemed determinations for administrative finality purposes.

In the absence of input to the contrary, deemed determinations are **based on the assumption that the recipient's circumstances** and, therefore, factors of eligibility and payment amount **remain the same** as in the prior month.

C. OPERATING POLICY

1. **How to Determine the Time When a Prior Determination or Decision Was Made**

In determining the time when a prior determination or decision was made:

a. The **time for reopening begins with the date that a determination was made**. For purposes of administrative finality, that date is the date of the notice of the initial determination (for deemed determinations, see 2. below).

b. This **date does not change** regardless of whether the recipient subsequently requests reconsideration and/or hearing, and regardless of whether the determination is later reopened and revised.

c. **System-generated notice information can be obtained from the NOTC (Notices Data)** segment of the SSR. This segment can be accessed on line by use of the NOTC request identifier on the SSI2 query request. The actual date of the notice is the SSIRD "NOTC" date plus 7 days.

If the NOTC date is August 11, 1988, the notice is actually dated August 18, 1988. See SM 01601.440 B.

In addition, **manual SSA-8155 information** can be obtained from the DUPR (Due Process) segment. Manual or automated overpayment notices can be obtained from the OPDR segment.

Careful interviewing regarding the issues being questioned permits **identification of the appropriate notice.** We must decide whether the rules of administrative finality permit reopening of the initial determination covered by the notice or subsequent appeal or revised determinations/decisions.

d. A system-generated notice may no longer be recorded on the SSR or may not be identifiable by query, or the determination/decision in question may have resulted in a manual notice. **We try to establish the approximate date of the determination/decision and issue involved from the claimant**, if possible. If the pertinent notice of initial determination was made more than 2 years in the past, the initial or appeal determination/decision in question cannot be reopened and revised unless there is fraud or similar fault.

2. **When There Is No Notice of a Prior Determination**

When there is no notice of a prior determination:

a. **For "deemed determinations,"** the date for purposes of administrative finality is the first day of the month.

C. OPERATING POLICY (Cont.)

2. When There is No Notice of a Prior Determination (Cont.)

b. **For "no change redeterminations,"** there is no date. These are not determinations for purposes of administrative finality that can be reopened and revised. (The above rule on "deemed" determinations would apply.)

c. **For erroneous death determinations,** we use the date that the erroneous date of death was input to the SSI system as the date of the initial determination.

3. Retrospective Monthly Accounting (RMA)

For retrospective monthly accounting (RMA):

a. **Eligibility Month and Effective Month**

For purposes of RMA, the "deemed" determination involves the **eligibility month**. Although the eligibility and budget months are usually different months, the **effective month** involved (i.e., relating to the "deemed" initial determination to be reopened and revised) is the eligibility month.

b. **Revision of Eligibility and Budget Months**

In an RMA case involving an actual determination with a notice (e.g., an SSI Notice of Planned Action or SSI Notice of Revised Determination) or a deemed determination, the **revised determination will involve** the eligibility month as well as **the income in the budget month** affecting payment amount.

c. **Effect of 1- and 2-Year Rules on Budget Month**

The budget month is normally 2 months before the eligibility month and may be beyond the 1-year or 2-year period for reopening under administrative finality. If the eligibility month is still within the appropriate period for reopening, **both months are considered in the review**, even if the budget month is not within the 1- or 2-year administrative finality period.

d. **Eligibility Month Falls Within the Administrative Finality Period, But the Budget Month Does Not**

This occurs when the budget occurred more than 1 or 2 years before the date of affirmative action in writing. Even if the **corrected countable income amount** would have resulted in ineligibility in the budget month, **it must be input to the SSR, and any resulting over- and underpayment notices must be suppressed.** In such cases, the system will recompute the eligibility month using the transitional computation cycle.

4. Months in Which There are "Deemed Determinations"

Months in which there are "deemed determination" are those months following the effective date of an actual initial determination. For example, if there is an award notice dated February 15, 1989, which explains about ongoing payments beginning March 1, 1989, the first deemed determination will be April 1, 1989, provided there are no intervening actual determinations. The **effective date** of the actual determination is March 1, 1989 **not** February 15.

5. Effect of Notice of Determination On "Deemed" Determinations

Since "deemed" determinations generate no notice, any determination for which notice is sent preempts a "deemed" determination. That is, **a "deemed" determination cannot coexist with an "actual" determination for the same period and covering the same subject.**

Likewise, there cannot be a deemed determination for a period of suspension status, since a notice of suspension must always be sent to the recipient.

6. Deemed Determinations and Appeal Rights

Although each deemed determination is treated as an initial determination for purposes of administrative finality, it is not a determination for which notice is sent and appeal rights arise. **The concept of deemed determination pertains only to reopening under administrative finality.**

7. Disability Cases and Deemed Determinations

The concept of "deemed determinations" **does not apply to disability issues.** There must be an initial determination with notice for reopening purposes.

D. OPERATING PROCEDURES

1. When a Claimant/ Recipient First Questions a Prior Determination

When a claimant/ recipient questions a prior determination, first, determine the period affected by the questioning or new evidence. See SI 04070.010 A. for the rules regarding time limits to reopen and revise determinations. Unless there is good cause, fraud or similar fault, the time limit for reopening is 1 year. **Good cause cannot be presumed but must be affirmatively shown and documented.**

2. Reopening and Revising At the FO Level

For reopening and revising at the FO level:

a. See SI 04070.001 D.2.c. for a description of what determinations can be reopened by an FO.

b. **If the new evidence and a review of the query or SSIRD is sufficient** to determine whether a revised determination is appropriate, we do not conduct a folder review.

c. If a review of the query or SSIRD is not sufficient to determine whether a revised determination is appropriate, and **a review of evidence in file is required, determine whether new and material evidence permits current eligibility or an increase in payment amount.**

d. **If so, obtain a new application** and process to payment or **make appropriate input to increase the current payment rate** pending a finding on whether a revised determination/ decision is in order. Obtain the folder as specified in SM 01201.001-SM 01201.100 J.

3. Determination Whether There Has Been a Prior Appeal or Determination

Try to determine from the query or the recipient whether appellate action beyond reconsideration has been taken on the issue now being questioned and whether the action was by an ALJ or the AC. The claimant may have a copy of the appellate determination/ decision or may be able to give sufficient information to ascertain whether an ALJ or the AC must decide on reopening it.

4. When the Appropriate Level for Reopening Is an ALJ or the AC

If the appropriate level for reopening is the ALJ or AC, the ALJ or AC may require the folder before deciding whether to reopen and revise the prior decision. Obtain the folder in accordance with SM 01201.001-SM 01201.100 J. We incorporate in the file any new evidence and forward the folder to the ALJ or AC, as appropriate. The ALJ or AC will notify the claimant if the decision is reopened or if reopening is denied.

E. RELATED POLICY

Notice History, CN 00801.040 and SM 01601.440

04070.040 REVISING DETERMINATIONS

A. POLICY PRINCIPLES

1. When a Determination May Be Revised After the 1- Or 2-Year Time Limit

A determination may be revised after the 1- or 2-year time limit if the investigation was **initiated before the time limit to reopen passed** and:

a. **the investigation is diligently pursued.**
The determination may be revised, **regardless of whether the revision is favorable or unfavorable** to the recipient.

b. **the investigation is not diligently pursued.**
If the determination is unfavorable to the individual it cannot be revised. If the determination is favorable, it must be revised.

2. When Diligent Pursuit May Be Presumed

Diligent pursuit may be presumed if the investigation is completed and **the determination is revised within the 6-month time period** after the date the investigation began.

B. DEFINITIONS

1. Investigation

An investigation is the process of gathering facts after a determination has been reopened to determine if revision of the determination is appropriate.

B. DEFINITIONS (Cont.)

2. Diligent Pursuit

Diligent pursuit exists if, in light of all the facts and circumstances of a case, necessary action was undertaken and carried out as promptly as circumstances permitted.

3. Reasonable Delay

Reasonable delay occurs when a determination is revised more than 6 months after the investigation began (i.e., the date of affirmative action in writing) and the lateness was caused by factors beyond SSA's control. Examples of reasonable delay include:

- Failure by recipient or his/her representative to cooperate
- Failure by a third party to cooperate
- Heavy workloads due to an **unforeseeable emergency** which results in an office closing for all or part of what would otherwise be a Federal workday; e.g., natural disaster, weather conditions, etc.

4. Unreasonable Delay

Unreasonable delay occurs when a determination cannot be revised more than 6 months after the investigation began (i.e., the date of affirmative action in writing) and the lateness is unexplained or caused by factors within SSA's control. Examples of unreasonable delay include:

- Loss of folder by the FO
- Long periods of inaction with no effort to contact or follow up with the recipient, an employer, a bank, or other source of information
- Heavy workloads that do not result from an emergency. Examples include workloads as a result of understaffing, heavy leave use by FO staff, legislative changes, lack of planning, etc.

An unreasonable delay by any component of SSA pertains to the entire agency. For example, if central office sends out computer listings to FO's late, this delay must also be evaluated in C. below. The fact that the FO initiated development immediately upon receipt of the listings is not the sole factor to consider regarding whether SSA's delay was reasonable or unreasonable.

5. Change of Position

A change of position occurs when a policy or legal precedent previously adhered to in making determinations or decisions changes as a result of:

- A court decision or other applicable legal precedent, or
- New policy considerations.

C. OPERATING POLICY

1. Justifying the New Determination or Decision

A revision of the final determination or decision is justified if reevaluation of the total evidence now on record supports a revision. It is not necessary that the revision be based solely on the new evidence, only that **all** evidence viewed as a whole justifies the conclusion. However, when the new evidence merely casts doubt on the correctness of the determination or decision, such determination or decision cannot be revised based on "new and material evidence." Such evidence can justify or even require that further development be undertaken; and if, as a result of such development, new and material evidence is secured, appropriate action should be taken.

2. Change of Statute or Regulations — Effective Date of Revision

Revision, if applicable, will depend on the effective date specified in the statute or regulations. Revision will also depend on whether the change has retroactive effect.

The instructions relating to the change will specify the effective date and how reopening and revision applies.

3. Applicability of Change of Position

a. **Pending Actions**

Unless otherwise specified in the change of position, it will be applicable as of its effective date to:

- All applications filed or pending on and after the effective date; and

C. OPERATING POLICY (Cont.)

3. Applicability of Change of Position (Cont.)

- All redeterminations, reconsiderations, ALJ hearings, AC reviews and litigation cases initiated or pending on and after the effective date.

With regard to reconsiderations and appeals initiated after the effective date, the change is to be applied retroactively to the effectivedate or 1 year, whichever is later.

b. **Cases in Which a Determination or Decision is Questioned After the Change of Position**

This includes both cases that are questioned by either the SSA employee or the recipient. You may reopen the case and apply the change of position retroactively to the effective date of the change or 1 year, whichever is later. (In the case of "deemed" determinations, within 1 year of the first day of the month to which the determination applies.)

c. **Not Good Cause for Reopening Under the 2 Year Rule**

Retroactive changes are limited to 1 year and do not, without the presence of new and material evidence, clerical error or error on the face of the evidence, justify 2-year retroactivity.

4. Class Action Cases (Exception To Normal Rules For Change of Position

In a Federal class action case, the court may issue an order with retroactive effect requiring SSA to locate and reopen determinations with regard to all or some class members. If so, the normal rules regarding change of position do not apply. In such an instance, **we must comply with the order** and reopen and **revise all affected cases as directed**, even if the notices of initial determination are more than 1 or 2 years old.

5. When to Begin Counting the 6-Month Time Period

To determine if there has been diligent pursuit, we **begin with the date the investigation began**. This is the date of **affirmative action in writing**.

For instructions regarding affirmative action in writing and initiating reopening and revision, see 04070.010 C.

6. Calculating Period to Revise

a. **Actual Initial Determinations With Notices**

An actual determination (as distinguished from "deemed determination") can be reopened and revised within 1 year (or 2 years) after the date of the notice of the initial determination. For example, if the affirmative action in writing occurs on April 22, 1989, **any actual initial determination** may be reopened and revised under the 2-year rule for good cause as long as the notice of initial determination is dated April 22, 1987, or later. If the 1 year rule applies, **an actual determination** may be reopened and revised so long as the notice of initial determination was dated April 22, 1988, or later.

See SI 04070.010 A.1. for a description of when the 1-year rule and 2-year rule apply.

b. **Deemed Determinations**

A similar rule applies to deemed determinations. The first day of the month is used as the date of the deemed determination instead of the date of the notice. The earliest deemed determination that can be reopened and revised is the first determination (i.e., involving the first **full** eligibility month) that occurred within the applicable 1- or 2-year period.

See SI 04070.030 B. for the definition of "deemed determination."

7. When the Investigation is Complete

The investigation is complete when all the facts necessary to determine whether or not to make a revision have been received. This is not sufficient to meet the diligent pursuit requirement. To meet the requirement, the determination must be revised.

8. When the Prior Has Been Revised

Revision is complete as of the **date of the notice** that the prior determination has been changed with respect to either eligibility or payment amount. This can be through an SSA-L8100, SSA-L8155 or any other form which might be used to give notice of a revised determination. The date of the notice is used to determine whether diligent pursuit can be presumed; i.e., if it occurs within 6 months after the date that the investigation began.

C. OPERATING POLICY (Cont.)

9. When Revision is Complete Within 6 Months (Diligent Pursuit)

When a revision is not complete within 6 months (diligent pursuit), there must be an analysis of the investigation **to determine if the cause of the lateness (delay) was reasonable**. In doing so, we pay careful attention to **periods of inaction**. Unexplained periods of inaction are presumed to constitute unreasonable delay. **SSA has the burden of showing that delays are reasonable**. See B.4. above.

10. New Affirmative Action Date When the Revision Is Not Completed Within 6 Months

When the revision is not completed within 6 months:

a. **If the delay is unreasonable**, a new date of affirmative action in writing may be established. This can be accomplished by:

- Documenting telephone calls; **or**
- Sending written requests for information or documenting in writing some other effort to obtain the facts necessary to revise the prior determination.

b. **If the affirmative action date occurs after the time limit** to reopen the determination has passed, it cannot be reopened and revised.

c. When an **interface run date** is the date of discovery of an error, a revision is not made within 6 months of the run date and there is an unreasonable delay in the investigation, the run date can no longer be used as the date of affirmative action in writing if the revision will be unfavorable to the claimant. In that event, use the date the investigation was restarted (e.g., the claimant was called in for an interview, a request for information was sent to a bank) and diligently pursued to completion as the new date of affirmative action in writing. This date can be before or after the 6-month period has expired following the interface run date.

11. Documentation

Whenever the revision does not occur within 6 months, the delay must be documented in writing regardless of whether it is found to be reasonable or not. **The documentation must include an explanation of why the delay was or was not reasonable.** If for some reason the cause of the delay is not documented, it is presumed to be unreasonable.

D. OPERATING PROCEDURE — Affirmative Action in Writing

1. More Than One Date of Affirmative Action in Writing

If there is more than one date of affirmative action in writing, use the earliest possible date. If the dates are more than 6 months apart, the rules concerning diligent pursuit may apply. See SI 04070.040 ff.

2. No Ascertainable Date of Affirmative Action in Writing

If there is no ascertainable date of affirmative action in writing, use the date of current review as the date of affirmative action in writing. (See the examples in SI 04070.010 C.2.)

E. OPERATING PROCEDURE — DILIGENT PURSUIT

If Affirmative Action in Writing or Recipient's Request to Reopen Occurs...	*And Adjudication Which Revises Prior Determination Occurs...*	*Then, the Diligent Pursuit Requirement...*
Within time limit for reopening	Within the time limit for reopening.	Does not apply. You may revise determination.
Within time limit for reopening.	After time limit to reopen has passed, but within 6 months after affirmative action writing.	Applies, and diligent pursuit is presumed. Revise regardless of whether it is favorable or unfavorable to the individual.

E. OPERATING PROCEDURE — DILIGENT PURSUIT (Cont.)

If Affirmative Action in Writing or Recipient's Request to Reopen Occurs...	*And Adjudication Which Revises Prior Determination Occurs...*	*Then, the Diligent Pursuit Requirement...*
Within time limit for reopening.	After time limit to reopen has passed, and more than 6 months after affirmative action in writing	Applies. If revision will be favorable, reopen and revise. If revision is unfavorable, analyze the reason for delay. **complete a report of contact to show whether the necessary actions were undertaken and carried out as promptly as circumstances** permitted (i.e., that delays were reasonable in nature and duration). • If yes, diligent pursuit requirement was met and determination may be revised. • If not, diligent pursuit requirement was not met. Determination may not be revised based on the date the investigation originally began. It may be possible to establish a new date from which the investigation was diligently pursued.
After time limit to reopen has passed.	Does not apply	Does not apply. Determination may not be reopened and revised unless there is fraud or similar fault.

F. EXAMPLES — DILIGENT PURSUIT

1. unreasonable Delay — No Diligent Pursuit

The FO received control lists and K6/K7 alerts pertaining to the 1987 MEF/SSR interface earned income discrepancy cases. The FO learns from the alert that Mr. John Jones has been receiving income since July 1986. The following dates apply:

- December 9, 1988 - MEF/SSR interface run
- December 19, 1988 - Control lists and alerts received in the FO. Development file set up.
- December 19, 1988 to April 15, 1989 - No action taken. The reason for inaction is unexplained.
- April 15, 1989 - Requests for information sent to Mr. Jones' employers.
- April 15, 1989 to August 14, 1989 - Investigation is diligently pursued. The FO follows up on requests at reasonable intervals.
- August 14, 1989 - Last response received. The investigation is complete, and revision is made.

In this case, the interface run date cannot be used since the revision was not made within 6 months. The period of unexplained inaction from December 19, 1988 to April 15, 1989 constitutes unreasonable delay. As a result, SSA is barred from revising deemed determinations from January 1987 to April 1987.

F. EXAMPLES — DILIGENT PURSUIT (Cont.)

1. unreasonable Delay — No Diligent Pursuit (Cont.)

A new affirmative action in writing date of April 15, 1989 should be established since the investigation recommenced on that date. The FO can revise actual initial determinations, as applicable, which occur on and after April 15, 1987 and deemed determinations from and after May 1, 1987. See SI 04070.030 C.4. for effect of notice of deemed determinations.

In this example, the 2-year rule is used since interface alerts constitute new and material evidence.

2. Reasonable Delay — Diligent Pursuit Requirement Met

Same basic situation as in Example 1, above. The following dates apply:

- December 9, 1988 - MEF/SSR interface run
- December 19, 1988 - Control lists and K6/K7 diaries received in the FO. Development files set up and request for information are sent out to Mr. Jones' employers by December 22.
- Although the FO followed up regularly and at reasonable intervals, the last report was not received until August 14, 1989.
- The revisions were made on August 14.

The investigation was diligently pursued, and completed with the revisions made on August 14. December 9, 1988 is the correct affirmative action in writing date. **An RC analyzing the delays from December 22 to August 14 and explaining why they are reasonable must be included in the file** since the investigation took more than 6 months. Any actual initial determination occurring on and after December 9, 1986 can be reopened and revised, and any deemed determination from and after January 1, 1987 can be revised as applicable. See SI 04070.030 C.4. for effect of notice of initial actual or deemed determinations.

3. Unreasonable Delay — Loss of FO Development File — Diligent Pursuit Requirement Not Met

Same fact situation as in Examples 1. and 2. above. The following dates apply:

- December 9, 1988 - MEF/SSR interface run.
- December 19, 1988 - Control lists K6/K7 diaries are received in the FO. Development file is set up.
- December 21, 1988 - FO loses the development file which had been set up 2 days before.
- July 15, 1989 - Development file is located.
- July 19, 1989 - Requests for information are sent to Mr. Jones' employers.
- August 14, 1989 - The last response is received and the FO makes revisions based on them.

Since losing the file is not justification for a delay, the delay from December 19, 1988 to July 19, 1989 is unreasonable (mere discovery of the file does not constitute affirmative action in writing). Any actual initial determinations which occurred on and after July 19, 1987 can be revised and any deemed determinations from and after August 1, 1987 can be revised. See SI 04070.030 C.4. for effect of notice of initial actual or deemed determinations.

04070.050 NOTICE OF REVISED DETERMINATION OR DECISION

A. POLICY PRINCIPLES

1. When Notice is Sent

A notice is required whenever a revision is made.

2. Where Notice is Sent

SSA mails the notice to the recipient's last known address and to the last known addresses of the representative payee and representative, if any, and any of the parties.

See CN 00801.001 ff. for description of who must receive notices.

A. POLICY PRINCIPLES (Cont.)

3. Contents of Notice

The notice must state the basis for the revision and the effect(s) of the revision and inform the parties of the right to further review (i.e., appeal).

4. Suspension, Termination, or Reduction

If the revision results in suspension, termination or reduction of current benefits, the SSA-L8155 must inform the recipient of his/her rights to continued benefits and to reconsideration (SI 02301.601 ff.). If the revised determination involves disability or blindness cessation because of medical reasons, see DI 12025.070 ff.

5. No Suspension, Termination, or Reduction

If the revision does not affect current benefits, the SSA-L8100 will inform the recipient of his or her right to a hearing if the revision affects a retroactive closed time period.

6. Evidence Not In the Record

If the AC or an ALJ proposes a revision based on evidence **not** in the record or which prior determination was used, the OHA notice will inform the recipient of the proposed action and the right to a hearing before any further action is taken.

7. Evidence on Record

If the AC or an ALJ proposes a revision based **only** on evidence of record or which the prior determination or decision was based, the OHA notice will advise the recipient of the proposed action, and will notify the claimant of all appeal rights.

B. OPERATING PROCEDURE — NOTICE FORMS

1. Prepare Notice to Claimant

If you reopen and revise the prior determination, the system will normally notify the recipient automatically by issuing a Notice of Revised Determination (SSA-L8100). If a manual notice is required, send an SSA-L8100-U2. If the claimant has requested that the decision be reopened and there is no basis to reopen and revise, use form SSA-L8165-U2 (Notice of Decision) to inform the claimant of your denial of his/her request.

2. Contents of Form SSA-L8165-U2 — Prior Determination Not Reopened

Include the following in the Form SSA-L8165-U2 when a prior determination will not be reopened:

a. **Reason for Not Reopening**
Explain why you are not reopening and revising.

b. **No Appeals Paragraph**
Since the denial of a request to reopen is a matter of administrative discretion and not an initial determination, **do not include an appeals paragraph.**

3. Advance Notice of Action to Be Taken Not Required

The system will normally issue an SSA-L8100 (Notice of Revised Determination). Ensure that the notice advises the recipient/claimant of the **right to hearing** by an ALJ as well as the **basis for the revised determination.**

Prepare an SSA-L8100 for a revised determination **pertaining to a closed retroactive period** (i.e., preceding and not involving a current, prospective, or ongoing period). (This also includes suspensions, terminations, and reductions as long as these adverse actions pertain to a retroactive period and do not involve a change in an individual's current eligibility or payment status.)

4. Advance Notice of Action to Be Taken Is Required

a. **Medical Issues Not Involved**
Use SSA-L8155 (SSI Notice of Planned Action). Usually, this notice is automated. **The recipient/claimant must be advised of the basis for the planned action and the right to reconsideration** and payment continuation (Goldberg/Kelly).

b. **Medical Issue Involved**
DDS's-issue the appropriate cessation notice per DI 28095.040 B., DI 28095.110, and DI 31505.001 ff.

5. Required Language

When you must send a manual notice, regardless of which notice (SSA-L8155 or SSA-L8100) is used, insert the notice paragraph 2750 from CN 00804.240 in notices which are prepared by the FO to refer to the fact that this is a revised determination.

C. EXAMPLES

1. Advance Notice Not Required Prior to the Revision Action

On March 2, 1987, we render an initial determination which establishes that the applicant is eligible for $400 per month beginning on February 1, 1987 (date of application). On September 1, 1988, the claimant presents evidence which establishes that he/she was actually eligible for $314 per month from February 1, 1987 to May 1987 and was eligible for $400 per month from June 1, 1987 and continuing.

A computer-generated SSA-L8100 is sent reflecting the revised determination with opportunity to request a hearing on the revised determination.

2. Advance Notice Required Prior to the Revision Action

On March 2, 1987, an initial determination is rendered which establishes that the claimant is eligible for $314 per month, beginning February 1, 1987. On July 1, 1988, the claimant presents evidence which establishes that he was living in the household of another and receiving support and maintenance beginning February 1, 1987, and therefore, was only eligible for $209.34.

Since the change is a prospective as well as a retroactive reduction, a computer-generated SSA-L8155 is sent reflecting the above revised determination of $209.34 per month beginning February 1, 1987, with opportunity to request reconsideration of the revised determination and the right to benefit continuation.

D. RELATED POLICY

1. SSI Posteligibility Notices — See CN 00803.001 ff.

2. Manually Prepared Notices — See CN 00801.010 ff.

3. Notice History and Retrieval — See CN 00801.040.

4. Goldberg/Kelly Notices — See SM 01308.100 ff.

04070.060 POSTELIGIBILITY ACTIONS

A. INTRODUCTION

1. Scheduled Redeterminations

SSA formally redetermines eligibility and payment amount on a periodic basis. (See SI 02305.001 ff.)

2. Unscheduled Redeterminations

SSA may formally redetermine eligibility and/or payment amount when:

- a recipient (or someone on his or her behalf) reports an event or a change or makes some other notification; or
- SSA on its own discovers a change.

(See SI 02305.022.)

B. OPERATING POLICY

1. Redetermination Involved a Change in Eligibility

Redeterminations which involve a change in eligibility are:

a. **Initial Determination**

- A redetermination that results in a determination which prospectively changes either a factor of eligibility or payment amount is an "initial determination." Such initial determinations can later be reopened and revised under the 1-year, 2-year rules or indefinite (unlimited) rule for fraud or similar fault as appropriate.
- The time period for reopening is measured from the date of the notice of the initial determination. (It is the initial determination resulting from the redetermination process, not the redetermination (process) itself, that can be reopened.)

B. OPERATING POLICY (Cont.)

1. Redetermination Involved a Change in Eligibility (Cont.)

b. **Revised Determinations**

- If the change made by a redetermination has retroactive effect, it is a revised determination. Revised determinations can be reopened and revised.
- It is important to note that the 1- or 2-year period for reopening a revised determination is measured from the date of the notice of the initial determination that it revises, **not** from the date of the notice of the revised determination.

  For example, notice of an initial determination is dated June 7, 1989 and the determination is revised on December 14, 1989. The notice of the revision is also December 14. The revised determination itself may be revised for good cause at any time until June 7, 1991 since the administrative finality period is measured from the date of notice of the initial determination.

c. **Determinations That Are Both Initial and Revised**

- Determinations resulting from a redetermination can be both "initial" and "revised" determinations at the same time. To the extent that they are prospective, they are "initial" determinations, and to the extent that they have retroactive effect, they are "revised" determinations.
- To the extent that such determinations are **initial** determinations, they can be reopened up to 2 years from the date of the notice of the determination. To the extent that they are **revised** determinations, they can be reopened up to 2 years from the date of the notice of the initial determination they are revising.

2. Redeterminations Involving No Change

If the redetermination results in no change in eligibility or payment amount, it is not a **determination for purposes of administrative finality** and is therefore not subject to reopening and revision. The deemed determinations for the months in the retroactive period which the redetermination process covers can be subsequently reopened and revised within the applicable time limits as if the redetermination had not occurred.

3. How to Calculate Administrative Finality Period

See the rules for calculating the period to reopen at SI 04070.010 A.1.

C. RELATED POLICY

1. Redeterminations — See SI 02305.001 ff.

2. Interfaces — See SI 02310.001 ff.

3. Disability Issues — See DI 12045.040-12045.050 and 12045.105.

04070.070 OVERPAYMENT/ UNDERPAYMENT DEVELOPMENT

A. OPERATING POLICY — OVERPAYMENTS

1. Late Discovery of an Event Causing an Overpayment

When the late discovery of an event causes an overpayment:

a. **If the event causing the overpayment occurred within the 1- or 2-year administrative finality period,** all actual or deemed determinations that are affected by the event can be reopened and revised as applicable.

A revised determination and an overpayment determination can be made for **all** months affected by the event.

b. **If the event causing the overpayment occurred before the 1- or 2-year administrative finality period,** some or all of the affected actual or deemed determinations may be barred to correction.

- All determinations which occurred **before** the administrative finality period may not be reopened or revised unless there is fraud or similar fault.

A. OPERATING POLICY — OVERPAYMENTS (Cont.)

1. Late Discovery of an Event Causing an Overpayment (Cont.)

- All affected determinations which occurred within the administrative finality period may be reopened and revised.

A revised determination and an overpayment determination can only be made for those determinations which can be reopened and revised.

2. Overpayment Determination

An overpayment determination is an initial determination separate from the revised determination giving rise to it.

3. Reopening Overpayment Determinations

If SSA subsequently discovers that the **overpayment determination** is incorrect, it may be reopened and revised for up to **2 years after the date of the notice of the overpayment initial determination**, regardless of the months affected. However, new overpayment issues during the period covered by an overpayment determination are limited to the 1- or 2-year administrative finality period before discovery.

B. OPERATING POLICY — UNDERPAYMENTS

1. Late Discovery of an Event Causing an Underpayment

The rules regarding late discovery of an event causing overpayment apply to late discovery of an event causing underpayment (see A.1. above).

2. Underpayment Determination

Unlike overpayment determinations, an underpayment determination is rarely made separately from the revised determination giving rise to the underpayment. **It is, however, an initial determination that can be reopened and revised** in the same manner as an overpayment determination. (See A.3. above).

C. RELATED POLICY

1. Systems Records of Overpayments

See GN 02201.730 and SM 01310.001 ff.

2. Netting underpayments Against Overpayments

See GN 02201.715 C. and SI 02101.000 ff.

04070.080 RELATIONSHIP TO TITLE II BENEFITS

A. OPERATING POLICY — REOPENING CONCURRENT SSI/ RSDI CLAIMS

1. Administrative Finality Period For RSDI Determinations/ Decisions

Although SSI determinations and decisions cannot be reopened after 2 years have elasped (except in cases of fraud or similar fault), RSDI (title II) claims can be reopened for **up to 4 years** if there is good cause.

2. Effect of 4-Years Rule on Reopening SSI Determinations/ Decsions

Under the 4-year rule on reopening SSI determinations/ decisions:

a. Often **the amount of the title II benefit will affect the payment amount of SSI.** If a title II determination is revised that was made before the administrative finality period for SSI purposes, it can only be applied to SSI determinations made within the 1-year or 2-yearperiod and/ or on a prospective basis.

b. The **change may be used to reopen both actual and deemed determinations** within the applicable administrative finality period.

c. **Determinations** or decisions made **before the applicable SSI administrative finality period cannot be reopened and revised,** even if they are incorrect as a result of the revision to the title II benefit.

3. When RSDI Revisions Will Affect SSI Payments

The question of revisions will arise when **issues in common to both programs** come up (e.g., age, disability) and when there is a **change in the benefit amount.**

B. RELATED POLICY

1. Cessation of Title XVI Disability and Blindness

Cessation of title XVI disability and blindness - See DI 12025.070 ff., DI 12045.040-12045.050, DI 12045.105, and DI 13005.001 ff.

The medical improvement review standards must be considered before reopening and revising certain types of disability or blindness determinations. See DI 27505.020 and DI 28010.001.

2. Erroneous Death Determination

- **Termination of SSI payments due to death is an actual** (i.e., not "deemed") initial determination that does **not** require a notice. Therefore, **upon discovery of an erroneous death determination, the determination can be reopened and revised during the 2-year period** after the date of the initial determination (i.e., the date the death termination data were input to the SSI system) under the rules of administrative finality. Proof that the claimant/recipient is still alive is always **new** and material evidence.

(See SI 02301.200 and SI 02301.601 C.1.).

- **If more than 2 years have passed since the erroneous death termination** action, see GN 03102.075 about filing a request for reconsideration based on establishment of good cause for late filing. This can often be granted because there was, of course, no notice of termination due to death. (SSA's Goldberg/Kelly procedures provide written advance notice before termination of a living recipient's eligibility.)

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